

FILED
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

12/9/2021 8:52 am
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES OF AMERICA, . Criminal No. 13-cr-00607-JFB-AYS-1

VS. . 100 Federal Plaza
Central Islip, NY 11722
PHILLIP A. KENNER, .
TOMMY C. CONSTANTINE . DATE November 29, 2021
• • • • •

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE HONORABLE JOSEPH F. BIANCO
VISITING JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEYS OFFICE
EASTERN DISTRICT OF NEW YORK
BY: MADELINE O'CONNOR, ESQ.
DIANE LEONARDO, ESQ.
271 Cadman Plaza East
Brooklyn, NY 11201

For Owen Nolan: PROSKAUER ROSE
BY: SEETHA RAMACHANDRAN, ESQ.
Eighth Avenue & 41st Street
New York, NY 10036

For Danske Bank: VENABLE LLP
BY: GEORGE KOSTOLAMPROS, ESQ.
DOREEN MARTIN, ESQ.
KELLY WEINER, ESQ.
XOCHITL STROHBEHN, ESQ.
1290 Avenue of the Americas
20th Floor
New York, NY 10104

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

TRACY GRIBBEN TRANSCRIPTION, LLC
PO BOX 688
Middletown, NJ 07748
(732) 263-0044 Fax No. 732-865-7179
800 603-6212
www.tgribbentranscription.com

ADDITIONAL APPEARANCES

For Diamante:
and Jowdy: FREEH SPORKIN & SULLIVAN
BY: THOMAS SOUTHER, ESQ.
350 5th Ave, Suite 6903
New York, NY 10118

FARRELL FRITZ
BY: KEVIN MULRY, ESQ.
622 Third Avenue, Suite 37200
New York, NY 10017

For Marc Wolinsky: WACHTELL LIPTON ROSEN & KATZ
BY: MARC WOLINSKY, ESQ.
51 West 52nd Street
New York, NY 10019

For Silverpeak: WINDELS MARX LANE & MITTENDORF
BY: JOHN HOLDEN, ESQ.
156 West 56th Street
New York, NY 10019

1 THE CLERK: Calling Criminal case 2013-607, United
2 States of America versus Phillip Kenner and Tommy Constantine.
3 Counsel, please state your appearances for the record.

4 MS. LEONARDO: For the United States Diane Leonardo
5 and Madeline O'Connor, Assistant United States Attorneys, good
6 afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. KOSTOLAMPROS: For Danske Bank, George
9 Kostolampros and my colleagues, Xochitl Strohbehn, Doreen
10 Martin and Kelly Weiner of Venable. Good afternoon, Your
11 Honor.

12 THE COURT: Good afternoon.

13 MR. WOLINSKY: Good afternoon, Your Honor, Marc
14 Wolinsky, spokesman for the homeowners, Diamante homeowners.

15 THE COURT: Good afternoon.

16 MS. RAMACHANDRAN: Good afternoon, Your Honor, Seetha
17 Ramachandran for Owen Nolan.

18 THE COURT: Good afternoon, Ms. Ramachandran.

19 MR. MULRY: Kevin Mulry from Farrell Fritz for the
20 DCSL parties. Good afternoon, Your Honor.

21 THE COURT: Good afternoon, Mr. Mulry.

22 MR. SOUTHER: And Thomas Souther from Freeh Sporkin
23 and Sullivan, also for the DCSL parties, good afternoon, Your
24 Honor.

25 THE COURT: Good afternoon, Mr. Souther.

1 MR. HOLDEN: Good afternoon, Your Honor, this is John
2 Holden, Windels Marx for Silverpeak.

3 THE COURT: Good afternoon, Mr. Holden. All right, I
4 think that's everybody we have today. And as you know, this
5 was scheduled as a status conference. I appreciate everybody
6 making themselves available, I know we moved up from tomorrow
7 because of a scheduling conflict that I had. And I think the
8 last letter I got was from the Government in early November
9 indicating that the approval was pending in D.C. with DOJ. So
10 I want to ask the Government to update me first.

11 MS. LEONARDO: Your Honor, this is Ms. Leonardo. In
12 the beginning of November we did, we got all the approvals from
13 our office. And we had sent it down to Washington for
14 approval. We've been told that it will probably be another
15 four to eight weeks for the approval process to finish, only
16 because it has to get approval by a Deputy Attorney General.
17 And that's why it's going to take some time.

18 THE COURT: All right. I don't -- if anybody -- Mr.
19 Kostolampros, do you have anything else to update the Court on?

20 MR. KOSTOLAMPROS: No, Your Honor, I mean we've been
21 working diligently with Silverpeak to finalize an agreement. I
22 think we're almost there. We'll probably need at most two
23 weeks. And frankly we could probably do it quicker if we needed
24 to be. It's a little disappointing to hear that, I think what
25 the Government is saying is they need another four to eight

1 weeks. I mean I think we've already been here for about eight
2 weeks. So it's, I don't understand why it's taking so much
3 time. And why we're not apprised of it. But you know,
4 obviously we want to see this get done.

5 So it's just really important for us because there is
6 a diligence period that's worked into this agreement that
7 there's going to be a lag. So you know, for instance once the
8 settlement agreement gets -- or the stipulation with the
9 Government gets signed, then the note agreement can move
10 forward and actually get finalized. But there will be a period
11 of diligence at that point that Silverpeak will have a right
12 to. And that's going to slow things down. Especially given
13 that the Government has come back and said four to eight weeks.

14 THE COURT: All right. Let me see if anybody else has
15 anything else to add. Ms. Ramachandran.

16 MS. RAMACHANDRAN: No, Your Honor.

17 THE COURT: All right, Mr. Mulry or Mr. Souther?

18 MR. SOUTHER: No, Your Honor, I have nothing to add.

19 THE COURT: All right, Mr. Holden.

20 MR. HOLDEN: No, Your Honor, nothing to add.

21 THE COURT: Mr. Wolinsky.

22 MR. WOLINSKY: Yes, Your Honor. Respectfully I
23 request that you set a four week deadline. This is, this
24 proceeding has been weighing on the resort. It's hurting
25 property values. It's hurting Silverpeak. It's hurt Danske

1 Bank. And it has to end. And you know, I respectfully ask
2 that you put a four week deadline on the Government's response.

3 THE COURT: Well I was disappointed to hear four to
4 eight weeks myself. And I did serve in Washington before I
5 took the bench. So I'm well aware of the bureaucratic issues
6 down there. But that still seems to me to be -- especially
7 because they've already four weeks, that -- let me ask Ms.
8 Leonardo. Are they aware, I don't know whether your memo
9 indicated to them the timing issues of this and the need to
10 have a somewhat expedited review of this. Are they aware of
11 that already?

12 MS. LEONARDO: Yes, Your Honor, they are aware of
13 that. We can, in fact we had emailed the attorney working on
14 it at the end of last week, we can speak to him again.
15 Reinforce that with him. But as you said, because it needs
16 approval from a Deputy Attorney General, there are a number of
17 different layers it has to go through. The attorney we're
18 working with now is trying to, I guess streamline that process.
19 So in addition to the initial memo we sent to him, we sent a
20 supplemental one trying to describe a little bit more about the
21 setup of the resort and Danske's claim, and a couple of other
22 issues.

23 So we have been working with him and he has been
24 working on it. We can speak to him again. But that was his
25 best estimate was four to eight weeks.

1 THE COURT: All right. What I'm going to do, I'm not
2 going to -- Mr. Wolinsky, I understand your frustration, I have
3 some of the same frustration myself. But the bottom line is, I
4 don't think it's appropriate to set a firm deadline, you know,
5 because I don't know what sanction I would impose on the
6 Government for not meeting that deadline under these
7 circumstances. Obviously everybody wants this to go through.
8 So I don't think that would be productive.

9 But what I am going to -- I want you to convey that
10 we've had this call, that a number of the parties indicated
11 issues that the continuing delay creates with respect to all
12 the different constituents that are affected by that, in terms
13 of the due diligence period, the Bank, the homeowners.

14 And I do think, I want a detailed letter either from
15 you or from them, if they are unable to do this by -- let me
16 give you a date, January 7th. Then I want a detailed
17 explanation of why it's taking so long. I don't -- I
18 understand, again I understand very well the amount of things
19 that need to get approved and the need for the Deputy Attorney
20 General to approve it. But that's five weeks from now.

21 So I'd like you to convey that, Ms. Leonardo.

22 MS. LEONARDO: Yes, Your Honor, we will do that.

23 THE COURT: All right. Is there anything else anyone
24 wants to address with the Court today? All right, thank you
25 very much, everybody. Have a good day.

1 MS. LEONARDO: Thank you, Your Honor.

2 * * * * *

3 **C E R T I F I C A T I O N**

4 I, **PATRICIA POOLE**, court approved transcriber,
5 certify that the foregoing is a correct transcript from the
6 official electronic sound recording of the proceedings in the
7 above-entitled matter.

8

9 /S/ PATRICIA POOLE

10 TRACY GRIBBEN TRANSCRIPTION, LLC DATE: December 8, 2021

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25